

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-824V

Filed: June 16, 2010

Not for Publication

DAVID ROCA,

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Petitioner,

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v.

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Thomas Mester, Cleveland, OH, for petitioner.

Debra A. Filteau Begley, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On June 9, 2010, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that he suffered from Guillain-Barre Syndrome (GBS) and/or chronic inflammatory demyelinating polyneuropathy (CIDP) following an influenza vaccination. Respondent denies that petitioner's GBS and/or CIDP were caused in fact by his influenza vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$7,281.49** in the form of a check made payable jointly to petitioner and the Ohio Department of Job and Family Services, Ohio Tort Recovery Unit in satisfaction of the State of Ohio Medicaid lien; and
- b. a lump sum of **\$150,000.00** in the form of a check made payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: June 16, 2010

Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

DAVID R. ROCA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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No. 08-824V
SPECIAL MASTER
LAURA D. MILLMAN

STIPULATION

The parties hereby stipulate to the following matters:

1. David R. Roca ("petitioner") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of an influenza vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received an influenza vaccination on November 13, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he sustained a vaccine-related injury diagnosed as Guillain-Barré Syndrome ("GBS") and/or chronic inflammatory polyneuropathy ("CIDP") that was caused-in-fact by the influenza vaccine. He further alleges that he experienced the residual effects of his GBS and/or CIDP for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.

6. Respondent denies that petitioner's GBS and/or CDIP and alleged residual effects were caused-in-fact by the trivalent influenza vaccine.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following payments:

(a) a lump sum of \$7,281.49, in the form of a check payable jointly to petitioner and Ohio Department of Job and Family Services, Ohio Tort Recovery Unit in satisfaction of the State of Ohio Medicaid lien; and

(b) a lump sum of \$150,000.00 in the form of a check payable to petitioner. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to, or death of, petitioner resulting from, or alleged to have resulted from, the influenza vaccination administered on November 13, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about November 20, 2008, in the United States Court of Federal Claims as petition No. 08-824V.

13. If petitioner should die prior to receiving the payments described in paragraph 8 (a) and (b), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be null and void at the sole discretion of either party.

Respectfully submitted,


PETITIONER:


DAVID R. ROCA


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Dated: 6/9/10